

HOUSE BILL NO. 584

INTRODUCED BY BARRETT, BRUEGGEMAN, GRIMES, GUTSCHE, STONINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CONTROLLED ALLOCATION OF LIABILITY LAWS; ELIMINATING THE TERMINATION DATE FOR THE CONTROLLED ALLOCATION OF LIABILITY ACT; AMENDING SECTION 75-10-743, MCA; REPEALING SECTION 75-10-752, MCA, AND SECTION 30, CHAPTER 415, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 75-10-743, MCA, IS AMENDED TO READ:

"75-10-743. (Temporary) Orphan share state special revenue account -- reimbursement of claims -- payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

- (a) all penalties assessed pursuant to 75-10-750(12);
- (b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;
- (c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;
- (d) unencumbered funds remaining in the abandoned mines state special revenue account;
- (e) interest income on the account;
- (f) funds received from settlements pursuant to 75-10-719(7); and
- (g) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The

1 department and the state are not liable for any penalties if the orphan share fund does not contain sufficient
2 money to reimburse claims, and interest may not accrue on outstanding claims.

3 (4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may
4 not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance,
5 are completed at a facility.

6 (5) Reimbursement from the orphan share fund must be limited to actual documented remedial action
7 costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney
8 fees, legal costs, or operation and maintenance costs.

9 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons
10 participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The
11 orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share
12 in proportion to the orphan share's allocated share, as follows:

13 (i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the
14 department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the
15 orphan share.

16 (ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation
17 under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs
18 incurred in defending the orphan share in proportion to each person's allocated share of liability.

19 (b) A person who pays the orphan share's proportional share of costs has a claim against the orphan
20 share fund and must be reimbursed as provided in subsection (3).

21 (7) ~~(a)~~ On August 21, 2002, \$1,000 is transferred from the orphan share fund to the general fund. If
22 sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the
23 general fund.

24 ~~(b) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims~~
25 ~~are paid, the money must be deposited in the general fund.~~

26 (8) If the lead liable person under 75-10-746 presents evidence to the department that the person
27 cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will
28 cause undue financial hardship on the person, the department may allow the submission of claims and may
29 reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early
30 reimbursement unless the person is in substantial compliance with all department-approved remedial action

1 plans.

2 (9) A person participating in the allocation process who received funds under the mixed funding pilot
3 program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive
4 reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot
5 program that are later attributed to the orphan share under the allocation process. (Terminates June 30,
6 2005--sec. 30, Ch. 415, L. 1997.)"

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8 NEW SECTION. Section 2. Repealer. Section 75-10-752, MCA, AND SECTION 30, Chapter 415, Laws
9 of 1997, ~~is~~ ARE repealed.

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11 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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